

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JENNIFER L. TOBIN, et al.,

Plaintiffs,

v.

THE STATE OF WASHINGTON, et al.,

Defendants.

CASE NO. C06-5630-RJB

ORDER DENYING MOTION TO  
STAY DISCOVERY

This matter comes before the Court on the Defendants' Motion and Memorandum in Support of Motion to Stay Discovery Pending Resolution of Defendant's Dispositive Motions Re: Jurisdiction, Failure to State a Claim, and Qualified Immunity. Dkt. 24-1. The Court has considered the pleadings filed in support of and in opposition to the motion and the file herein.

On October 10, 2006, Plaintiffs filed a Complaint with the Superior Court of Washington for Pierce County. Dkt. 1-3, at 11. Plaintiffs allege that their son, Gabriel Tobin, exited his day care, walked through an unfenced yard to Lake Tapps, where he accidentally drowned. *Id.*, at 16. Plaintiffs allege, among other things, that Defendants acted negligently in licensing the day care facility. *Id.*, at 15-16. Plaintiffs further allege, under 42 U.S.C. § 1983, that Defendants violated Plaintiffs' civil rights of substantive due process guaranteed by the Fifth and Fourteenth Amendments. *Id.*, at 17.

On October 27, 2006, Defendants removed the case to this Court. Dkt. 1. Plaintiffs filed

1 a Motion to Remand on November 22, 2006. Dkt. 10. This Court denied the Motion to Remand  
2 on December 19, 2006. Dkt. 17.

3 On March 21, 2007, Defendants filed the pending motion. Dkt. 24-1. Defendants ask this  
4 Court to stay discovery pending resolution of Defendants' summary judgment motion on qualified  
5 immunity. Dkt. 24-1, at 2. Defendants have not yet submitted a summary judgment motion, but  
6 anticipate submitting this summary judgment motion within approximately thirty days from March  
7 21, 2007. *Id.* Defendants assert that a stay of discovery is appropriate because defendants who  
8 are found to have qualified immunity are entitled to immunity from suit, discovery, and other  
9 demands of litigation. *Id.*, at 4. Further, Defendants argue that Plaintiffs cannot articulate a  
10 constitutionally protected interests that was violated by Defendants, and "[g]iven the high  
11 probability that the defendants will prevail on the qualified immunity issue, it would be an injustice  
12 to allow defendants to undergo the burden of discovery prior to a ruling on the issue of immunity  
13 from suit." *Id.*, at 7.

14 On March 29, 2007, Plaintiffs submitted a response, arguing that a stay of discovery  
15 would be inappropriate. Dkt. 25. Plaintiffs argue that, "even when qualified immunity is at issue,  
16 it would be inappropriate for the District Court to deny Plaintiff's basic discovery when the  
17 vehicle of a summary judgment motion is utilized to raise such an issue." *Id.*, at 5. Further,  
18 Plaintiffs argue, even if this Court were to eventually grant Defendants' hypothetical summary  
19 judgment motion, the Plaintiffs' state negligence claims would still remain and discovery on those  
20 claims should continue. *Id.*

21 In general, parties may obtain discovery regarding any matter, not privileged, that is  
22 relevant to the claim or defense of any party. Fed. Rule Civ. P. 26(b)(1). A district court may  
23 limit discovery "for good cause," and may continue to stay discovery when it is convinced that the  
24 plaintiff will be unable to state a claim for relief. Fed. Rule Civ. P. 26(c)(4); *Wood v. McEwen*,  
25 644 F.2d 797 (9th Cir. 1981).

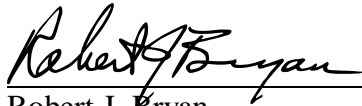
26 The Defendants, as the moving party in this motion, have failed to show that "good cause"  
27 exists warranting a stay of discovery. As of the date of this order, Defendants indicate that they  
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1 intend to file their dispositive motion on qualified immunity within the next two weeks.  
2 Continuing discovery for the next few weeks does not create an undue burden on Defendants.  
3 Moreover, if Defendants choose to move for summary judgment based on qualified immunity, it  
4 would be unjust to Plaintiffs for the Court to stay discovery, particularly on issues related to  
5 qualified immunity.

6 Therefore, this Court hereby **ORDERS**:

- 7 (1) The Defendants' Motion and Memorandum in Support of Motion to Stay  
8 Discovery Pending Resolution of Defendant's Dispositive Motions Re:  
9 Jurisdiction, Failure to State a Claim, and Qualified Immunity (Dkt. 24-1) is  
10 **DENIED**;  
11 (2) The Clerk of the Court is instructed to send uncertified copies of this Order to all  
12 counsel of record and to any party appearing *pro se* at said party's last known  
13 address.

14 DATED this 9<sup>th</sup> day of April, 2007.

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16 Robert J. Bryan  
17 United States District Judge  
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